

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Utility Consumer's Action Network (UCAN),

Complainant,

vs.

Pacific Bell Telephone Company, AOL-Time
Warner, Inc., Does 1-100,

Defendant.

Case 02-07-044
(Filed July 24, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING STAYING
EVIDENTIARY HEARING AND SCHEDULING
SETTLEMENT HEARING ON APRIL 27 AND 28, 2004**

The evidentiary hearing in this proceeding was scheduled for April 26 through 30, 2004, in San Francisco. However, on March 26, 2004, the Utility Consumers' Action Network (UCAN) and Pacific Bell Telephone Company (Pacific) filed a proposed settlement between them, and jointly moved for Commission approval. AOL-Time Warner, Inc. (AOL) is not a party to the proposed settlement.

It makes little sense to proceed with the evidentiary hearing since it cannot be determined whether Pacific will remain an active party at hearing until the Commission approves or disapproves its settlement with UCAN. Accordingly, this ruling stays the evidentiary hearing scheduled for April 26-30, 2004 and schedules a settlement hearing on April 27 and 28, 2004. The hearing will begin

at 10:00 a.m. on both days in the Commission Courtroom, State Office Building, 505 Van Ness Avenue (at McAllister), San Francisco, California.

At the settlement hearing, the sponsoring parties will be questioned about their proposed settlement, the parties will be asked to discuss the nature and prospective dates of the evidentiary hearing if the settlement is approved or disapproved by the Commission, and the parties will consider whether AOL can contribute to and become part of an all-party settlement.

Parties should be prepared to respond at the settlement hearing to the following questions, among others:

- How soon after exceeding \$50 in access charges for calls to AOL will Pacific customers be warned about the charges and urged to review their access numbers?
- What procedures has Pacific put in place to monitor AOL access numbers in order to detect toll charges?
- Approximately how many AOL access numbers will be monitored?
- What have been the results of this monitoring program to date?
- Approximately what cost will Pacific incur in conducting its monitoring program?
- If the Commission authorizes Pacific to share this access charge information with AOL, is AOL willing to provide immediate e-mail notice to those customers who have exceeded \$50 in access charges?
- Why is the Pacific notification program limited to 18 months, and what happens to customers who thereafter incur unintended toll charges for calls to AOL?
- What relief, if any, does the settlement agreement propose for individual customers represented in this complaint case?

- Without waiving its objection to this Commission's jurisdiction, is AOL willing to become a party to the proposed settlement agreement? Will such waiver permit Commission jurisdiction to enforce the terms of the settlement in the event that AOL fails to comply with its commitments thereunder?
- If AOL is willing to become a party to the proposed settlement, is it willing to commit to using best efforts to implement by year end a process by which its new subscribers enter the first six digits of their telephone numbers (area code plus first three digits) in order to obtain a more reliable list of no-toll access numbers?
- If AOL is willing to become a party to the proposed settlement, is it willing to defray a portion of the cost of Pacific's notification program?
- While UCAN in the settlement proposes to withdraw its motion for sanctions against Pacific for alleged disclosure of confidential settlement discussions, should the Commission on its own motion consider sanctions for alleged violation of Rule 51.9 of the Rules of Practice and Procedure? If not, why not?
- If AOL does not join in an all-party settlement, what allegations against AOL does UCAN intend to pursue at hearing?
- What remedies will UCAN seek against AOL if this case proceeds to evidentiary hearing?
- Assuming the Commission acts on the settlement proposal at its meeting on June 9, 2004, should the evidentiary hearing in this matter be rescheduled for July 20-23, 2004?
- If the evidentiary hearing in this matter is rescheduled, should the parties be given the opportunity to revise their written testimony?
- Should AOL's appeal of the ruling denying AOL's motion to dismiss for lack of jurisdiction be considered when the Commission addresses the proposed settlement?

- In addition to the AOL jurisdiction issues, should the Commission in its settlement decision be asked to address any other issue that has been raised by any party in this proceeding?
- What effect, if any, will the proposed settlement have on other telephone companies and other Internet Service Providers in California?

IT IS RULED that:

1. The evidentiary hearing in this matter scheduled for April 26-30, 2004, is stayed.
2. A settlement hearing is set for April 27 and 28, 2004, beginning at 10 a.m. each day in the Commission hearing room in San Francisco.
3. Parties are to be prepared to respond at the settlement hearing to the questions set forth in this ruling.

Dated April 6, 2004 at San Francisco, California.

/s/ GLEN WALKER

Glen Walker
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Staying Evidentiary Hearing And Scheduling Settlement Hearing On April 27 And 28, 2004 on all parties of record in this proceeding or their attorneys of record.

Dated April 6, 2004, at San Francisco, California.

/s/ ELIZABETH LEWIS
Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at

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(415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.